

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Incentive Auction Task Force and Media)	MB Docket No. 16-306
Bureau Seek Comment on Post-Incentive)	
Auction Transition Scheduling Plan)	
)	
Media Bureau Seek Comment on Update to)	MB Docket No. 16-306
Catalog of Reimbursement Expenses)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	
)	
Comment Sought on)	AU Docket No. 14-252
Competitive Bidding Procedures for)	
Broadcast Incentive Auction 1000, Including)	
Auctions 1001 and 1002)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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SUMMARY

T-Mobile USA, Inc. (“T-Mobile”)¹ submits these reply comments in response to submissions made in MB Docket No. 16-306 responding to the Incentive Auction Task Force (“IATF”) and the Media Bureau’s Public Notice seeking comments on the post-incentive auction transition scheduling plan (the “Transition Plan”).² T-Mobile further submits reply comments in the open incentive auction proceeding, GN Docket No. 12-268, with regard to the prohibited communications rule.

T-Mobile reiterates its support for the proposed Transition Plan and commends the Commission for its reasonable balancing of the public interest priorities of clearing of the new 600 MHz band for wireless use and minimizing disruption to broadcasters. T-Mobile continues to encourage the Commission to rely on the data and evidence in the record rather than worst-case scenario ideations in finalizing the Transition Plan. T-Mobile agrees with other commenters that targeted project management and an iterative process will be integral to the success of the transition. T-Mobile further joins other commenters in urging the Commission to sparingly grant broadcaster requests for construction deadline waivers based only on critical need; and instead encourages broadcasters to utilize alternatives, such as auxiliary antennas or temporary channel-sharing to avoid delay and disruption.

In response to various commenters’ concerns about potential delays due to permitting and zoning, T-Mobile also takes this opportunity to add into the record the results of a commissioned

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

² See generally *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, DA 16-1095 (rel. Sept. 30, 2016) (“*Transition Plan Public Notice*”).

study that demonstrates that administrative/planning activities (which include permitting and zoning) for the vast majority of television transitions are adequately accommodated in the proposed Transition Plan. Moreover, the Commission's timelines are consistent with expectations following the policy changes adopted in 2014 by which the FCC, with an eye toward expediting the post-auction transition, curtailed the ability of local and state jurisdictions to deny and unreasonably delay permitting and zoning for modifications to existing broadcast facilities.

Finally, T-Mobile reiterates its call for additional Commission guidance on the prohibited communications rules to clarify what communication can occur between broadcasters and vendors toward pre-transition planning efforts prior to and after the final stage rule is met. The Commission should specifically clarify that restricted party television stations may communicate about the post-auction transition immediately after the Incentive Auction satisfies the final stage rule. T-Mobile further urges the Commission, after the release to broadcasters of their confidential letters, to permit third-party clearinghouses, to include forward-auction participants, to act as an intermediary among broadcasters and vendors to facilitate and accelerate transition planning.

I. THE TRANSITION PLAN’S 39-MONTH TIMETABLE IS REASONABLE AND ACHEIVABLE.

A. Evidence supports 39 months as the reasonable and achievable 600 MHz spectrum clearing deadline to balance the dual goals of the Incentive Auction.

The Transition Plan proposes an effective and efficient means of ensuring continuity of over-the-air television services while rapidly transitioning auctioned spectrum for mobile broadband use. The 39-month timeline to complete this process is achievable and, as the D.C. Circuit held in *National Association of Broadcasters v. FCC*, “reasonably balance[s] the Spectrum Act’s competing imperatives.”³ The tremendous resources and analytical tools the Commission has dedicated to designing a realistic, flexible, and transparent Transition Plan demonstrates that the Commission itself is under no illusion that the task at hand will simple or easy. By combining intensive, evidence-driven analytical methodologies with open discussions among stakeholders across all aspects of the affected industries, the Commission has developed a Transition Plan that confirms its prior determination that 39-months is sufficient to achieve the dual goals of expeditiously transitioning spectrum to mobile broadband use while minimizing broadcast disruption.

Some commenters have suggested that the Commission should extend the timelines for broadcaster transitions until such time as wireless companies are prepared to operate on the spectrum. They claim because wireless bids in the forward auction have not yet met the final stage rule there is purportedly evidence that the wireless industry does not need immediate access to the 600 MHz band spectrum.⁴ This assertion is simply specious. The Incentive Auction is working

³ 789 F.3d 165, 182 (D.C. Cir. 2015) (“*NAB v. FCC*”) (rejecting co-petitioner Sinclair Broadcasting’s claim that the 39-month timeline was arbitrary and capricious).

⁴ See Comments of Block Communications, Inc., *et al.*, MB Docket No. 16-306, GN Docket 12-268, at 3 (Oct. 31, 2016) (arguing that there is no rush to repack the spectrum since “wireless bidders are not showing any overwhelming enthusiasm for purchasing broadcast spectrum”); *see*

as it was intended, and market equilibrium will be achieved when price and demand meet. The FCC is implementing Congress' determination that making more spectrum available for wireless broadband use was a public policy priority that will benefit consumers and unleash economic growth.⁵ It is abundantly clear from substantial engagement of wireless companies and their industry associations throughout the entire Incentive Auction process — including in the broadcaster Transition Plan — that mobile broadband providers are very eager to see a successful auction and an efficient, cooperative transition of the spectrum. The Transition Plan appropriately prioritizes clearance of the new 600 MHz band and the Commission should reject any deprioritization in transitioning the band.

The record is replete with data confirming the achievability of the timeframes proposed by the Transition Plan. Working in partnership with William F. Hammett and Rajat Mathur of Hammett & Edison, Inc., and Jack Boone of Broadcast Tower Technologies, Inc., T-Mobile submitted data-driven analyses of the feasibility of a timely broadcast relocation process.⁶ Tower companies and manufacturers also provided evidence, and continue to update the record, regarding their own capabilities and the feasibility of the timeline from their unique position as the vendors

also Comments of The E.W. Scripps Company, MB Docket No. 16-306, GN Docket 12-268, at 3 (Oct. 31, 2016) (asserting that full-power and Class A stations whose spectrum has been sold to wireless operators be permitted to remain on their channels until wireless companies are ready to operate).

⁵ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567, ¶ 1 (2014) (“*Incentive Auction R&O*”), *aff’d*, *NAB v. FCC*, 789 F.3d 182 (D.C. Cir. 2015)).

⁶ *See generally* T-Mobile, et al., *On Time and On Budget: Completing the 600 MHz Incentive Auction Repacking Process Within the FCC’s 39-Month Relocation Deadline and the Budget Established by Congress*, GN Docket 12-268 (Feb. 17, 2016); T-Mobile, et al., *On Time and On Budget: A Response to Digital Tech Consulting, Inc.’s March 2016 Presentation on the State of Broadcaster Resources*, GN Docket 12-268 (May 11, 2016) (“*Response to DTC*”).

who will be undertaking the work.⁷ Many vendors also have launched advertising and marketing campaigns to make the broadcast industry aware of their investments toward post-incentive auction repack preparedness and new product offerings intended to make the transition more cost-effective and expedient for broadcasters.⁸ While the transition will undoubtedly face challenges, the plan proposed by the FCC is robust and flexible enough to adapt without condemning the entire process to failure. In fact, the very design of the Transition Plan may well work in favor of those commenters concerned about there being insufficient time or resources to conduct tower structural work or manufacture of auxiliary antennas. Because the plan proposes to allocate fairly evenly the number of stations in each phase, there should be ample structural resources to meet demand

⁷ See, e.g., Comments of Electronic Research, Inc., MB Docket No. 16-306, GN Docket 12-268, at 1 (Oct. 31, 2016) (“The Commission’s transition plan, including the tools to be created to schedule and implement it, the investments being made by ERI to prepare for the television repack, and the existing capacity provided by other suppliers should make it possible to complete the process within the 39 months allotted....”); Comments of Tower Engineering Professionals, Inc. (TEP) and TEP Design Build (TEPDB), MB Docket No. 16-306, GN Docket 12-268, at 3 (Oct. 31, 2016) (“TEP Comments”) (“Based on our experience in industry, TEP/TEPDB is confident that the transition can be completed on time”); Comments of RIO Steel & Tower, Ltd., MB Docket No. 16-306, GN Docket 12-268, at 1 (Oct. 31, 2016) (“As a tower and modification manufacturer and service provider for both the broadcast and telecommunications industries, RIO supports the FCC’s proposed transition scheduling plan.”); Comments of Grundy Telcom Integration, Inc., MB Docket No. 16-306, GN Docket 12-268, at 2 (Oct. 31, 2016) (“Based on our experience in industry and in the DTV transition in the recent past, GTI is confident that the transition can be completed on time”). See also Ex Parte Notice of T-Mobile USA, Inc., GN Docket 12-268 (July 29, 2016) (providing spec sheets from a variety of antenna manufacturers about new broadband auxiliary antennas for use in the broadcast repack); Ex Parte Notice of T-Mobile USA, Inc., GN Docket No. 12-268, AU Docket No. 14-252 (Apr. 12, 2016) (regarding presentations by representatives of RIO Steel & Tower, Ltd. and Grundy Telcom Integration, Inc. about each company’s repacking capabilities).

⁸ See, e.g., *ERI: Experts Helping Broadcasters Build & Deploy New Antennas*, <https://vimeo.com/190779120> (Nov. 2016); GatesAir Solutions, *Are You Ready for the Spectrum Repack?*, <http://www.gatesair.com/solutions/are-you-ready-for-the-spectrum-repack> (last visited Nov. 10, 2016); *Dielectric Introduces Innovative Auxiliary UHF Antenna Ideal for TV Spectrum Repack*, Dielectric (Apr. 6, 2016), <http://bit.ly/1TXyIIU> (last visited Nov. 10, 2016); *RFS Prepares for US DTV Repack – Are you ready?*, Radio Frequency Systems (Mar. 2016), <http://bit.ly/2fVcoTk> (last visited Nov. 10, 2016).

at any given time. Likewise, while broadband auxiliary antennas will not need to be *installed* for each station on day one of Phase One, the Plan provides manufacturers with the assurance that at least 75% of stations will need them. Thus, factories can start production immediately (prior to the end of the auction) and continue into the first year of the Transition, after which they can pivot to fulfilling the demand for more complex and customized full-power antennas for the prime of the transition.

B. The Commission should adopt project management and feedback mechanisms.

T-Mobile agrees with CTIA and AT&T that there is a need for robust project management, as well as transparency of status and ongoing reporting from broadcasters to ensure there is an iterative process with the continuous feedback loops necessary to evaluate — and adjust or correct as needed — the transition schedule in real time.⁹ T-Mobile itself noted in its Comments that there needs to be clarification of the feedback mechanisms the Commission expects to provide them with the inputs needed to revise scheduling, and how exactly adjustments will be made and communicated to the affected parties.¹⁰ T-Mobile wants to be clear, however, that such oversight should be targeted, purposeful, and necessary to achieving the goals of the Transition. In contrast, requiring reporting for the sake of appearances is will result in nothing more than a bureaucratic bog of useless information.

⁹ See Comments of CTIA, MB Docket No. 16-306, GN Docket No. 12-268, at 8-10 (Oct. 31, 2016) (“CTIA Comments”) and Comments of AT&T, MB Docket No. 16-306, GN Docket No. 12-268, at 2-4 (Oct. 31, 2016) (“AT&T Comments”).

¹⁰ Comments of T-Mobile, MB Docket No. 16-306, GN Docket No. 12-268, at 11 (Oct. 31, 2016) (“T-Mobile Comments”).

C. Requests for deadline waiver must be subjected to an “extraordinary circumstances” standard.

T-Mobile also agrees with commenters CTIA, CCA, and AT&T that any requests for waiver of construction deadline or reassignment to a later phase must meet a high bar.¹¹ Indeed, T-Mobile agrees with the Commission that such requests from broadcasters should be presumptively disfavored.¹² Furthermore, the burden must be on the broadcaster to demonstrate that its delay will not disrupt the transition of any other station or the timely ability of a wireless provider to utilize the spectrum (if the station is in the 600 MHz band). This is not to say that the Commission should be draconian or that any broadcasters should be forced off the air. As T-Mobile explained in its earlier Comments, there are multiple “relief valves” available to broadcasters that should be endorsed by the FCC and utilized in lieu of extensions or waivers unless absolutely necessary.¹³

D. Data and policy changes contradict claims that permitting and zoning delays will derail the Transition Plan.

Finally, T-Mobile would like to add into the record evidence to rebut contentions by several commenters that the proposed Transition Plan allots far too little time for overcoming anticipated zoning and permitting hurdles. Rather than rely on industry lore of worst-case-scenarios from the DTV transition, T-Mobile commissioned a study from a respected communications tower site development company with many years of experience in coordinating zoning and permitting for

¹¹ See Comments of Competitive Carriers Association, MB Docket No. 16-306, GN Docket No. 12-268, at 9-10 (Oct. 30, 2016) (“CCA Comments”); CTIA Comments at 12-14; AT&T Comments at 4-5.

¹² *Transition Plan Public Notice*, ¶ 27.

¹³ T-Mobile Comments, at 4-9 (noting that liberal use of auxiliary antennas as well as the options of temporary channels and temporary channel-sharing are all ways in which transition delays can be mitigated while ensuring continuity of broadcasting) .

broadcast facility modifications across the United States. The study, conducted during the months of September and October 2016, examined a representative sample of approximately 190 full power and Class A broadcast facilities located in more than 150 different jurisdictions. It determined that **97%** of studied broadcast facilities should be able to obtain necessary permitting within 1-3 months for modifying their structures. It also determined that 45% of the facilities would not need additional zoning action prior to grant of a building permit. And, for the remaining 55% that would need additional zoning action prior to building permit grant, **83%** of those stations should be able to obtain all necessary zoning approvals within an additional 1-3 months.¹⁴ In other words, more than 80% of all stations should encounter *total* permitting and zoning timeframes of less than 6 months. This independent study result demonstrates that the *minimum* time—32 weeks—being allotted in the Transition Plan’s Pre-Construction Stage for Administration/Planning for non-“complicated” DTV station transitions is more than sufficient time for the vast majority of stations.¹⁵

The results of this study are unsurprising in the context of recent changes across jurisdictions following the FCC’s 2014 *Broadband Infrastructure Order* that sharply limited the types of objections state and local zoning authorities can raise to facilities siting requests.¹⁶ As T-Mobile previously explained in the Incentive Auction docket,¹⁷ the *Broadband Infrastructure*

¹⁴ Details about the study results, methodology and jurisdictions surveyed are provided in Appendix A hereto. Note, T-Mobile does recognize that there are some jurisdictions that have particular challenging zoning and permitting processes. This study by no means downplays their existence, but rather suggests those are exceptions, not the rule.

¹⁵ *Transition Plan Public Notice*, App. A, ¶ 42 and Table 6.

¹⁶ See generally *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, et al., Report and Order, 29 FCC Rcd 12865 (2014) (“*Broadband Infrastructure Order*”).

¹⁷ *DTC Response* at 16.

Order adopted rules limiting the ability of state and local jurisdictions to delay zoning requests for communications facilities. The Commission adopted these rules specifically with an eye towards the Incentive Auction, concluding “that inclusion of broadcast service equipment in the scope of transmission equipment covered by the provision furthers the goals of the legislation and will contribute in particular to the success of the post-incentive auction transition of television broadcast stations to their new channels.”¹⁸ Among other things, the Commission included broadcast transmission equipment, including antennas and coaxial cable, within the scope of facilities for which state and local governments cannot deny modifications when the modifications do not “substantially change the physical dimensions” of a tower or base station.¹⁹ Under the FCC’s definition of a “substantial change,” a tower outside of a public right-of-way will only undergo a “substantial change” if a modification “increases the height of the tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater.”²⁰ The Commission further found that its rules would “expedite and minimize the costs of the relocation of broadcast television licenses that are reassigned to new channels in order to clear the spectrum that will be offered for broadband services through the incentive auction”²¹ In sum, while a small number of stations may encounter permitting and zoning delays, the widespread doom-and-gloom prognostications are not borne out in the data and broadly should not come to pass in light of the important policy changes enforceable via the *Broadband Infrastructure Order*.

¹⁸ *Broadband Infrastructure Order*, ¶ 153.

¹⁹ *Id.* ¶ 15

²⁰ *Id.* ¶ 188

²¹ *Id.* ¶ 153

II. CLARIFICATION OF THE PROHIBITED COMMUNICATIONS RULES WOULD EXPEDITE TO A SUCCESSFUL TRANSITION.

A. Additional guidance from the Commission about how it applies the rule on prohibited communications would encourage information sharing and has the potential to accelerate the post-auction transition.

Commenters agree that public guidance on how the Commission interprets the prohibited communications rule would help dispel unwarranted misapprehension by stakeholders about the rule's scope.

Restricted party broadcasters are free to communicate with their vendors, consultants or, indeed, any unrestricted party about the post-auction transition or any other matters so long as the unrestricted third-party is not acting as a conduit of information from one restricted party to another.²² The Commission has identified various safeguards that restricted parties can use to ensure unrestricted parties do not become conduits for prohibited communications among

²² The Commission's *Guidance on Prohibited Communications* explained that "prohibited communications rule prohibits only communications among restricted parties not necessarily communications to third parties." *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794, at ¶ 12 (rel. Oct. 6, 2015) ("*Prohibited Communications Public Notice*"); see also *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Schedule*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268 (rel. Sept. 30, 2016) ("*Scheduling Notice*") (noting that the prohibited communications rule "should not preclude any party from addressing relevant issues regarding the post-auction transition").

restricted parties.²³ Yet some commenters continue to express fear that communications between restricted party television stations and their vendors and consultants are prohibited.²⁴

These fears are misplaced. The Commission should dispel any lingering confusion about the limited scope of the prohibited communications rule by issuing repeated, plain-language interpretations of its rule.²⁵ Reaffirming the circumstances under which prohibited communications may occur will reduce uncertainty and accelerate the post-auction transition.²⁶

²³ Parties can ensure their vendors and consultants do not act as conduits for prohibited communications through the use of non-disclosure agreements that are commonplace in the industry as a means of protecting commercially sensitive information. *See Prohibited Communications Public Notice* ¶ 13 (explaining that “Commission precedent provides guidance for how a covered party can guard against a third party becoming a conduit for prohibited communications to other covered parties” by, for instance, requiring the third party “to sign a non-disclosure agreement before the licensee communicates any information regarding bids or bidding strategy to the third party.”).

²⁴ *See* Comments of FDH Velocitel, MB Docket No. 16-306, GN Docket No. 12-268, at 1 (Oct. 31, 2016) (“Not much benefit is gained by the affected broadcaster from advanced notice if unable to commence discussions with vendors concerning the RF and structural landscapes.”); Joint Comments of California Oregon Broadcasting, Inc. et al., MB Docket No. 16-306, GN Docket No. 12-268, at 6 (Oct. 31, 2016) (“COB Comments”) (“Consequently, the FCC could find that telling a consulting engineer, lawyer, or another broadcaster (who may already know whether the station applied to participate in the incentive auction) that a station is being repacked communicates information about that station’s bids or bidding strategies.”); Comments of American Tower Corporation, MB Docket No. 16-306, GN Docket No. 12-268, at 2 (Oct. 31, 2016) (“American Tower Comments”) (“The Commission should confirm that stations can share this information [post-auction channel assignments and technical parameters] with vendors who will be involved in their repacking processes.”); COB Comments at 7-8 (“If the Commission wants its transition plan to be successful, it must allow broadcasters to communicate with relevant employees, contractors and advisors ...”); *see also* CCA Comments at 11 (encouraging further elaboration on application of the prohibited communications rule because “broadcasters and wireless operators should have the ability to freely coordinate with tower crews and equipment manufacturers – without fear of punishment or violation of regulatory barriers – to facilitate a fluid exchange of equipment information, timelines, and test schedules”).

²⁵ *See, e.g.*, CCA Comments at 12 (noting the value of “[t]ransparency and certainty” to ensuring a timely post-auction transition of the 600 MHz band).

²⁶ *Accord, e.g.*, Comments of Tower Engineering Professionals, MB Docket No. 16-306, GN Docket No. 12-268, at 3 (Oct. 31, 2016) (“TEP Comments”) (urging the Commission to “reiterate

B. The Bureau should expressly identify some situations where certain types of communications will not implicate the Commission’s rule on prohibited communications.

Commenters agree that the bids and bidding strategies of restricted party television stations are not implicated by communications among restricted party television stations once the incentive auction satisfies the final stage rule. Section 1.2205(b) of the Commission’s rules prohibits restricted parties from communicating their bids or bidding strategies directly or indirectly to any other restricted party.²⁷ The Commission has emphasized that this rule is “limited in scope and only prohibit[s] disclosure of information that *affects, or has the potential to affect*, bids and bidding strategies.”²⁸ The rule on prohibited communications is contextual. The Commission has not adopted a rigid, immutable taxonomy of information that distinguishes always permissible communications from always prohibited communications.²⁹ Instead, the Commission evaluates each communication based on the circumstances involved to determine whether or not the information conveyed at that time “affects, or has the potential to affect, bids and bidding strategies” of restricted parties in the auction.³⁰

The prohibited communications rule therefore does not bar discussions among restricted party television stations about the post-auction transition that occur after the incentive auction

that the prohibition on auction communications does not apply to regular business activities, such as tower maintenance”).

²⁷ 47 C.F.R. § 1.2205(b).

²⁸ *Prohibited Communications Public Notice* ¶ 3 (emphasis added).

²⁹ *See, e.g., id.* ¶ 40 (“As with any communication, all of the surrounding facts and circumstances must be considered when determining whether a particular communication violates the rule.”).

³⁰ *Id.* ¶ 3.

satisfies the final stage rule.³¹ These types of communications cannot convey information that “affects, or has the potential to affect, bids or bidding strategy” in the reverse auction because the reverse auction is complete. Nor can these types of communications convey information that “affects, or has the potential to affect, bids or bidding strategy” in the forward auction because, by that stage, forward-auction bidders’ activity can no longer be influenced by the outcome of the reverse auction. In these circumstances, forward-auction bidders will already know the information relevant to their bidding on the number of channels available in any given market as a result of broadcast participation in the reverse auction.

As T-Mobile explained in its initial comments, communications among restricted-party television stations that occur after the final stage rule cannot affect, nor can they have the potential to affect, bids and bidding strategies; therefore, these types of communications should not be

³¹ *Scheduling Notice* ¶ 31 (noting that the prohibited communications rule “should not ... preclude any party from addressing relevant issues regarding the post-auction transition”); Comments of T-Mobile, MB Docket No. 16-306, GN Docket No. 12-268, at 18-20 (Oct. 31, 2016) (“T-Mobile Comments”).

considered prohibited.³² Commenters addressing the issue agree.³³ While T-Mobile therefore does not oppose the waivers or relaxation of the rule that some parties have sought, extraordinary relief should not be necessary because the rule should not apply in the first instance.³⁴ In any event, whether the Commission chooses to address these issues by clarification, waiver or some

³² See T-Mobile Comments at 19. The same reasoning applies to the similar situations T-Mobile identified in its initial comments in which the parties involved, the passage of time, or the subject of the communication prevent the communication from affecting the bids or bidding strategies of restricted parties in the incentive auction. For example, T-Mobile asked the Wireless Bureau to clarify that restricted-party forward-auction applicants may communicate about post-auction transition matters with three categories of restricted-party television broadcast stations: (a) those that received “zero-dollar” opening bids in the reverse auction and could not participate in the bidding process; (b) those that did not participate in the reverse auction; and (c) those that exited the auction during reverse-auction bidding. See *id.* at 20-21. T-Mobile also asked the Wireless Bureau to clarify that restricted-party television stations that did not participate or are no longer participating in the reverse auction are able to communicate about the post-auction transition with similarly situated restricted-party television stations. See *id.* at 21. While no commenters addressed specific situations T-Mobile identified, T-Mobile’s initial comments explain how these types of communications taken in context cannot affect bids or bidding strategies and should not be prohibited. These types of communications cannot affect, nor do they have the potential to affect, bids and bidding strategy; therefore, the Commission should clarify that the rule on prohibited communications does not apply in these situations, either.

³³ See, e.g., COB Comments at 7 (“There is no reasonable justification to retain the anti-collusion rules for television stations once the final stage rule has been satisfied.”); Joint Comments of Cordillera Communications et al., MB Docket No. 16-306, GN Docket No. 12-268, at 17 (Oct. 31, 2016) (“Cordillera Comments”) (“Once all bidding is over for broadcasters, there is no public interest purpose in continuing to subject broadcasters to the prohibited communications rule.”).

³⁴ American Tower Comments at 3 (“the Commission should adopt a blanket waiver of its prohibited communications rule – to become effective upon receipt of confidential letters – so that the information in such letters may be shared with other stations operating on the same tower”); Cordillera Comments at iii (“The Commission also should lift the prohibited communications rule when it sends broadcasters their confidential letters with their post-auction channel assignments.”); Comments of National Association of Broadcasters, MB Docket No. 16-306, GN Docket No. 12-268, at 12-13 (Oct. 28, 2016) (“NAB Comments”) (asking the Commission to “waiv[e] its prohibited communications rules for reverse auction participants once the final stage rule is satisfied in the incentive auction”); see also CCA Comments at 11 (encouraging the Bureau to “work with the Commission to relax these prohibited communications rules regarding post-auction relocation matters” due to the risk of delayed implementation between satisfaction of the Final Stage Rule and issuance of the closing notice).

other mechanism, the comments make one thing clear: stakeholders would benefit from Bureau statements explaining that communications among restricted party television stations about the post-auction relocation that occur after the incentive auction satisfies the final stage rules as well as similar types of communications that do not implicate bids or bidding strategies are permitted under the rule.

C. Restricted-party broadcast stations should enjoy opportunities to voluntarily disclose their auction status to interested parties after the Commission sends confidential letters to stations announcing the new channel plan.

The Spectrum Act appears to constrain the Commission’s ability to publicize restricted-party broadcast stations’ auction status immediately following satisfaction of the final stage rule to any party other than the relevant licensee. In the *Scheduling Plan Public Notice*, the Commission announced its intent “to send each eligible station that will remain on the air after the auction a confidential letter identifying the station’s post-auction channel assignment, technical parameters, and assigned transition phase.”³⁵ Many commenters, including T-Mobile, welcomed the Commission’s announcement as an important mechanism to accelerate transition planning and implementation.³⁶ Many commenters also noted that expanding the number of parties that can

³⁵ *Scheduling Public Notice* ¶ 7.

³⁶ See, e.g., T-Mobile Comments at 18 (“All broadcast stations would benefit from a head start in the transition process during the period of time between when the final stage rule is satisfied and release of the Auction Closing and Channel Reassignment Public Notice”); NAB Comments at 12 (supporting “the Commission’s constructive proposal to notify repacked stations of their new channel assignments once the final stage rule is satisfied, but before the incentive auction is complete” because it will “provide repacked stations with a valuable head start in preparing cost estimates and construction permit applications”); Cordillera Comments at iii (“Broadcasters need to be able to discuss their post-auction channel placement with others in the industry in order to begin their transition planning. The sooner they can begin their planning, the smoother the transition will be for viewers, broadcasters, and the Commission itself.”).

access the reverse-auction results would accelerate the transition process.³⁷ For example, California Oregon Broadcasting and other parties recommended that the Commission expand access to reverse-auction status information, variously, to all stations on the same transmission facility,³⁸ to all stations in the same transition phase,³⁹ or to the public at large.⁴⁰

Unfortunately, none of these proposed disclosures to third-parties appear to be permitted by the Spectrum Act. As NAB correctly suggested, the Spectrum Act requires the Commission to maintain the confidentiality of restricted party television station status in the auction for the duration of the auction.⁴¹ Section 6403 (a)(3) of the Act provides that “[t]he Commission shall take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction under paragraph (1) [the reverse auction], including withholding the identity of such licensee until the reassignments and reallocations (if any) under subsection (b)(1)(B) become effective, as described in subsection (f)(2) [which provides, “no reassignments or reallocations under subsection (b)(1)(B) shall become effective until the completion of the reverse auction under subsection (a)(1) and the forward auction under subsection

³⁷ NAB Comments at 12 (stating that broader disclosure of the status of reverse-auction applicants would “be dramatically more useful if stations are also informed of the new channel assignments of neighboring stations, which will allow stations to begin planning with a better understanding of their new interference environment”).

³⁸ *See* COB Comments at 6-7.

³⁹ *See id.* at 10-11 (noting that “the Commission could include in each station’s confidential letter a list of all other stations assigned to the same transition phase”).

⁴⁰ *See id.* at 9 (asserting that “there is no reason not to publicly release the preliminary channel reassignments”).

⁴¹ NAB Comments at 12.

(c)(1)].”⁴² Therefore, the constraint on publicizing the auction status of restricted party television stations is *not* driven by the Commission’s rule against prohibited communications, but rather due to the confidentiality provisions in the Spectrum Act that Congress adopted and the President signed into law.⁴³

Commenting parties proposed two kinds of third-party clearinghouses to accelerate the 600 MHz transition process without violating the statutory directive of section 6403(a)(3) of the Act. California Oregon suggested establishing a clearinghouse operator that would “collect information from the parties on a voluntary basis and then share it among stations that are not participating or no longer participating in the auction.”⁴⁴ NAB proposed the same approach.⁴⁵ And the Commission could presumably perform the same function as the third-party clearinghouses proposed by California Oregon and NAB.

In its comments, T-Mobile offered a similar proposal. Under T-Mobile’s approach, broadcasters would volunteer information about their auction status to a forward-auction applicant.

⁴² 47 U.S.C. § 1452(a)(3).

⁴³ NAB Comments at 12 (“The Commission may feel constrained from publicly releasing the new channel assignments of all repacked stations prior to the close of the incentive auction due to the confidentiality provisions of the Spectrum Act.”), The rule on prohibited communication only applies to communications that may “affect, or have the potential to affect, bids and bidding strategies”—something disclosure of the reverse auction results cannot do once the reverse auction is complete. *See Prohibited Communications Public Notice* ¶ 3.

⁴⁴ *See* COB Comments at 10 (noting that “the Commission could authorize the creation of a ‘clearinghouse’ for phase and channel reassignment information. Broadcasters would be able to voluntarily provide the clearinghouse with information regarding their phase and channel assignment, which could then be published or provided to other broadcasters upon request—all without the Commission’s involvement.”).

⁴⁵ NAB Comments at 13 (“If the Commission were to provide a blanket waiver of the prohibited communications rules, it might be possible for a third party, such as NAB, to potentially serve as a clearinghouse for this information, allowing repacked stations the opportunity to easily exchange information concerning their post-auction channels with other stations in their market”).

With the broadcaster's consent, the forward auction applicant would share that information with similarly situated broadcasters that must also relocate and have consented to sharing their auction status.⁴⁶ T-Mobile's approach would not only allow reverse-auction bidders to share information once the Commission's confidential auction status letters arrive, but also permit information sharing among broadcast stations prior to the close of reverse-auction bidding under certain limited circumstances. This early information sharing would help stations that share the same transmission facilities plan for post-auction relocation even before the Commission distributes the confidential auction-status letters. Clarifying the Commission's preferred process for the voluntary, limited dissemination of information about a party's reverse-auction status would help ensure compliance with the statutory directive of the Spectrum Act.

III. CONCLUSION

The proposed Transition Plan provides a comprehensive plan for the transition that appropriately balances the dual goals of expeditiously transitioning spectrum to wireless broadband use while ensuring continuity of broadcast television. As expressed herein, there are a handful of modest revisions the Commissions should make before adopting its final Transition Plan to ensure an effective and efficient transition.

Respectfully submitted,

_____/s/_____
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November 15, 2016

⁴⁶ See T-Mobile Comments at 15.

APPENDIX A

T-Mobile Jurisdictional Analysis

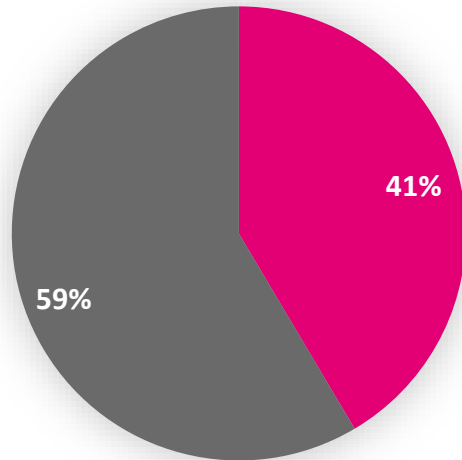
- T-Mobile commissioned a well-respected communications tower site development company with many years of experience in coordinating zoning and permitting for broadcast facility modifications across the United States to research and provide detailed information on a sample of approximately 190 structures in both urban and non-urban locations with full power and Class A broadcast facilities.
- This analysis reviewed the current entitlements, regulations, and local jurisdictional requirements for modifications of the existing broadcast equipment on these structures.
- Of the structures evaluated, 73% are located in urban areas (10k+ pops) and 27% are in non-urban locations.
- The jurisdictional analysis was initiated from the data contained in the FCC's Licensing and Management System (LMS) database, and was supplemented with location-specific expertise as necessary to reflect accurate and updated facilities.
- The types of modification considered for this study included all of the following:
 1. Auxiliary broadband antenna will be installed at a new side mounted location (at the radiation center height) on the structure;
 2. Assume auxiliary antenna will remain on structure permanently or as a temporary installation scenario (approximately 60 days);
 3. Removal of original broadcast antenna;
 4. New broadcast antenna installation; AND
 5. Existing transmission line will be removed and replaced with new transmission line.

Key Questions in Analysis

1. Are there FM broadcaster(s) collocated on the structure?
2. How long does a building permit take to acquire in a jurisdiction?
3. Do modifications require zoning action? If so, how long would the zoning process likely take?

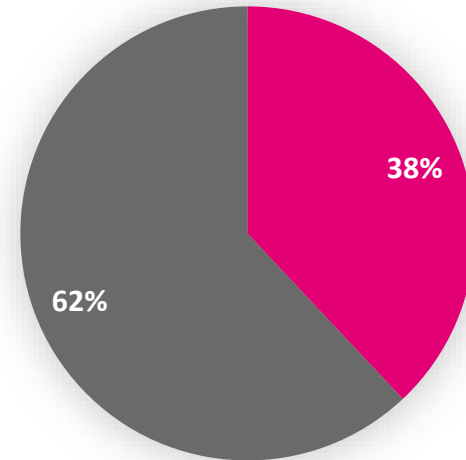
FM Station(s) Collocated on Structure?

Urban Locations



■ Yes ■ No

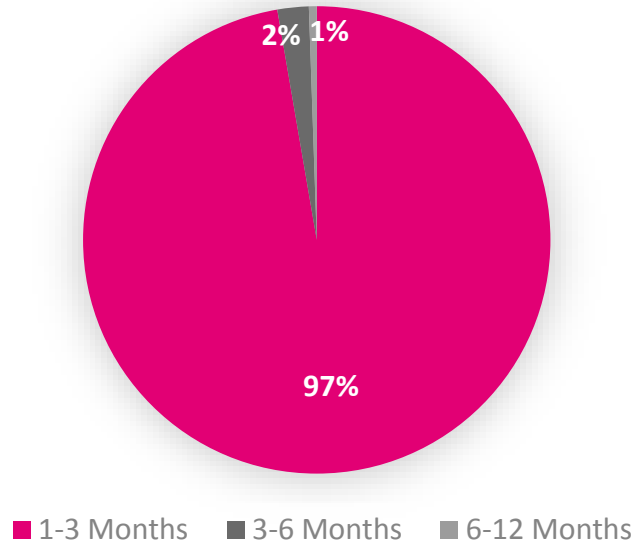
Non-Urban Locations



■ Yes ■ No

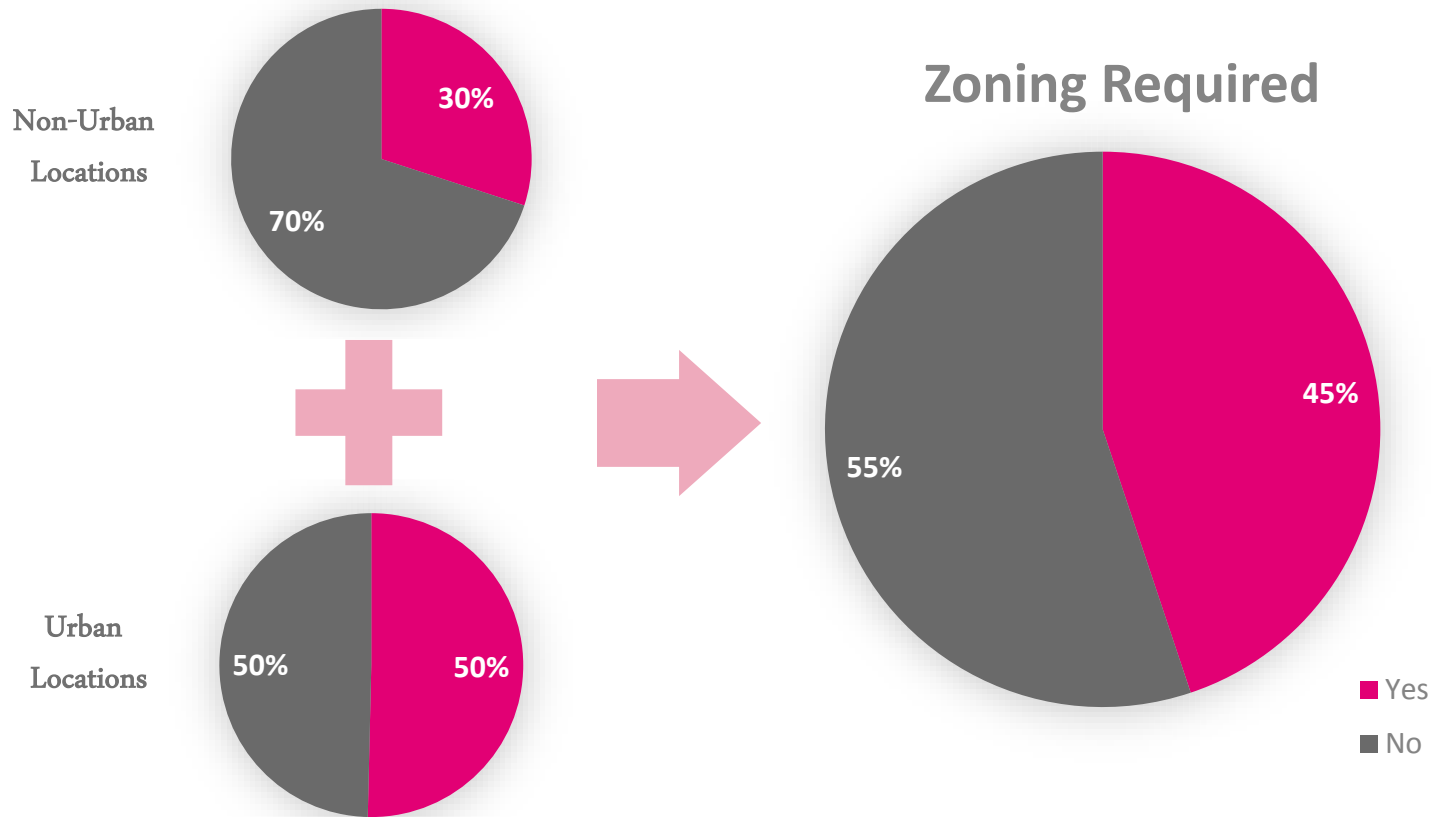
Building Permit Time-Frame

Estimated Permit Approval Time-Frame

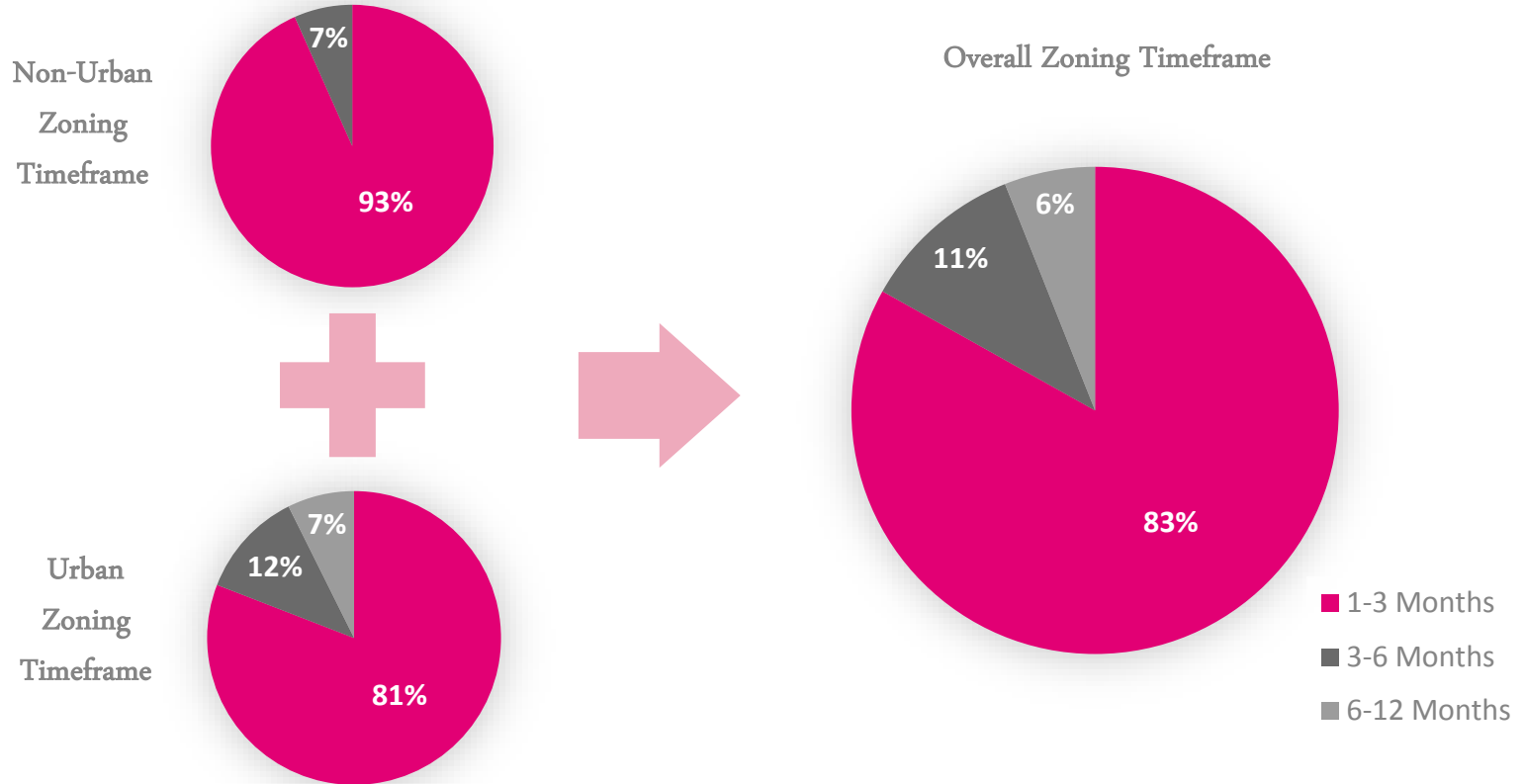


- Most jurisdictions require permits for building, electrical and/or remodeling.
- Most permit applications will require signed and sealed construction drawings, structural analysis, and jurisdiction fees. Some applications will require 3rd party approvals.
- The 3% of facilities that exceed the 1-3 month permit approval timeline are all located in urban locations.

Is Zoning Required?



Zoning Time Frame (when needed)



States, Counties, and Jurisdictions Studied

State Name	County Name	Jurisdiction
Alabama	Montgomery	Montgomery
Alabama	Baldwin	Steelwood
Alaska	Anchorage	Anchorage
Alaska	Ketchikan Gateway	Ketchikan
Alaska	Sitka	Sitka
Arizona	Coconino	Pilgrim Playground
Arkansas	Benton	Bentonville
Arkansas	Crawford	Van Buren
California	Santa Barbara	Santa Barbara
Colorado	Montrose	Montrose
Colorado	Routt	Steamboat Springs
Colorado	La Plata	Durango
Florida	Hillsborough	Tampa
Florida	Okaloosa	Destin
Florida	Monroe	Key West
Florida	Orange	Lockhart
Florida	Escambia	Brent
Georgia	Bryan	Pembroke
Georgia	Murray	Chatsworth
Hawaii	Honolulu	Honolulu
Idaho	Gem	Emmett
Idaho	Bannock	Pocatello
Illinois	Champaign	Champaign
Illinois	Johnson	Vienna
Illinois	Champaign	Penfield
Illinois	Sangamon	Rochester
Illinois	Williamson	Jenkins
Indiana	Marion	Indianapolis
Indiana	Allen	North Highland
Iowa	Pottawattamie	Council Bluffs
Iowa	Polk	Des Moines

State Name	County Name	Jurisdiction
Iowa	Marshall	Marshalltown
Iowa	Buchanan	Rowley
Iowa	Dubuque	Eagle Point
Iowa	Plymouth	Hinton
Kansas	Ellis	Hays
Kansas	Shawnee	Topeka
Kansas	Ford	Howell
Kansas	Ottawa	Vine Creek
Kansas	Sedgwick	Colwich
Kentucky	Owen	Owenton
Kentucky	Hardin	Elizabethtown
Kentucky	Taylor	Campbellsville
Louisiana	Jefferson	Terrytown
Louisiana	Caddo	Shreveport
Maine	York	Sanford
Maine	Cumberland	North Baldwin
Maine	Penobscot	Dixmont Center
Maryland	Baltimore	Towson
Michigan	Dickinson	Iron Mountain
Michigan	Oakland	Southfield
Michigan	Wayne	Detroit
Michigan	Wayne	Highland Park
Michigan	Marquette	Republic
Minnesota	St Louis	Duluth
Minnesota	Hennepin	Minneapolis
Mississippi	Benton	Ashland
Mississippi	Prentiss	Booneville
Mississippi	Lauderdale	Wolf Springs
Mississippi	Sunflower	Southside
Missouri	Buchanan	Saint Joseph
Missouri	Butler	Loma Linda

State Name	County Name	Jurisdiction
Missouri	Taney	Kissee Mills
Montana	Yellowstone	Billings
Montana	Missoula	Missoula
Montana	Custer	Smiths Trailer Court
Montana	Gallatin	Chestnut
Nebraska	Hayes	Marengo
Nebraska	Lancaster	Pine Acre Mobile Home Park
Nebraska	Rock	Sybrant
Nebraska	Scotts Bluff	Mintle
Nevada	Clark	Henderson
New Jersey	Passaic	Little Falls
New Mexico	San Juan	Farmington
New Mexico	Roosevelt	Portales
New Mexico	Curry	Clovis
New Mexico	Lea	Caprock
New York	Nassau	Plainview
New York	Suffolk	Ridge
New York	New York	New York
New York	Dutchess	Beacon
New York	Onondaga	Syracuse
New York	Clinton	Lyon Mountain
North Carolina	Jones	Trenton
North Carolina	Wake	Legend Hills
North Dakota	Benson	Minnewaukan
North Dakota	Stutsman	Jamestown
North Dakota	Ward	Minot
North Dakota	Ward	South Prairie
Ohio	Cuyahoga	Seven Hills
Ohio	Allen	Lima
Ohio	Hamilton	Finnestown
Ohio	Cuyahoga	Parma

State Name	County Name	Jurisdiction
Ohio	Delaware	Delaware
Ohio	Franklin	Columbus
Ohio	Lucas	Toledo
Oklahoma	Roger Mills	Cheyenne
Oklahoma	Marshall	Madill
Oklahoma	Tulsa	Tulsa
Oklahoma	Nowata	Nowata
Oklahoma	Cleveland	Moore
Oklahoma	Johnston	Bromide
Oklahoma	Rogers	Oowala
Oklahoma	Woodward	Sharon
Oregon	Douglas	Roseburg
Oregon	Deschutes	Bend
Oregon	Josephine	Grants Pass
Oregon	Jackson	Phoenix
Oregon	Lane	College Hill
Oregon	Union	Cove
Pennsylvania	Westmoreland	Murrysville
South Carolina	Horry	Pitch Landing
South Dakota	Pennington	Rapid City
South Dakota	Aurora	Plankinton
South Dakota	Walworth	Lowry
Tennessee	Obion	Union City
Tennessee	Crockett	Alamo
Tennessee	Rutherford	Murfreesboro
Tennessee	Davidson	Nashville
Tennessee	Anderson	Upper Windrock
Tennessee	McNairy	Adamsville
Texas	Howard	Big Spring
Texas	Ector	West Odessa
Texas	Maverick	Eagle Pass

State Name	County Name	Jurisdiction
Texas	Williamson	Georgetown
Texas	Bell	Killeen
Texas	Lubbock	Lubbock
Texas	Brazos	College Station
Texas	Gillespie	Fredericksburg
Texas	Dallas	Dallas
Texas	Hays	San Marcos
Texas	Ector	Odessa
Texas	Val Verde	Del Rio
Texas	Nueces	Corpus Christi
Texas	Wichita	Wichita Falls
Texas	Fayette	La Grange
Texas	Bexar	San Antonio
Texas	Concho	Vick
Texas	Winkler	Notrees
Utah	Iron	Cedar City
Vermont	Chittenden	Stevensville
Virginia	Norton	Norton
Virginia	Fairfax	Merrifield
Virginia	Roanoke	Airpoint
Washington	Yakima	South Broadway
Wisconsin	Milwaukee	Shorewood
Wisconsin	Milwaukee	Whitefish Bay
Wisconsin	Brown	Shirley
Wisconsin	Marathon	Rib Mountain
Wyoming	Carbon	Rawlins
Wyoming	Campbell	Gillette
Wyoming	Albany	Laramie
Wyoming	Fremont	Boysen
Wyoming	Sweetwater	South Baxter